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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

JAMIE ORTEGA, SALLY SHIVELY,
BETSY VERGARA, PATSYANN SUTTON,
MARY PEREZ, and STEFANIE DIAMOND
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

EMANATE HEALTH MEDICAL CENTER,
and DOE DEFENDANTS 1-10

Defendant.

Case No. 22STCV28142

**CONSOLIDATED CLASS ACTION
COMPLAINT FOR:**

- 1. VIOLATION OF CAL. PENAL
CODE § 630, *et seq.*;**
- 2. VIOLATION OF CAL. CIV. CODE
§ 56, *et seq.*;**
- 3. VIOLATION OF CAL. CONST.
ART. 1 § 1; AND**
- 4. INTRUSION UPON SECLUSION.**

JURY TRIAL DEMANDED

Plaintiffs Jamie Ortega, Sally Shively, Betsy Vergara, Patsyann Sutton, Mary Perez, and Stefanie Diamond (collectively, “Plaintiffs”) bring this class action complaint on behalf of themselves and all others similarly situated (the “Class Members”) against Emanate Health Medical Center and Doe Defendants 1-10 (collectively “Defendant” or “Emanate”). The allegations contained in this class action

1 complaint are based on Plaintiffs' personal knowledge of facts pertaining to themselves and upon
2 information and belief, including further investigation conducted by Plaintiffs' counsel.

3 **NATURE OF THE ACTION**

4 1. This is a class action lawsuit brought on behalf of all California citizens who had their
5 personally identifiable information and/or protected health information improperly disclosed to
6 Facebook as a result of using Defendant's websites, www.emanatehealth.org and
7 www.emanatehealthmedicalgroup.com.

8 2. Defendant aids employs, agrees, and conspires with Facebook to intercept
9 communications sent and received by Plaintiffs and Class Members, including communications
10 containing protected medical information. Plaintiffs bring this action for legal and equitable remedies
11 resulting from the illegal actions described herein.

12 **JURISDICTION AND VENUE**

13 3. The Court has personal jurisdiction over Defendant because Emanate Health Medical
14 Center's headquarters is located in Covina, California, and it does regular business in the State of
15 California.

16 4. This is a class action lawsuit brought pursuant to Code of Civil Procedure §382, and this
17 Court has jurisdiction over Plaintiffs' claims because the amount in controversy exceeds this Court's
18 jurisdictional minimum.

19 5. Venue is proper under Code of Civil Procedure §395(a), §395.5, and Civil Code §1780(c)
20 because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this
21 county.

22 **THE PARTIES**

23 ***Defendants***

24 6. Defendant Emanate Health Medical Center is registered as a nonprofit entity with its
25 principal place of business in California. Emanate employs approximately 3,600 individuals, and its
26 projected annual revenue is \$513 million. Emanate offers a full range of medical services, including
27 primary and outpatient care, and treats thousands of patients each year.
28

1 7. Plaintiff does not know the true names of Doe Defendants 1-10 and therefore sues them
2 by these fictitious names. Plaintiffs are informed and believe, and on the basis of that information and
3 belief, allege that each of the Doe Defendants are in some manner proximately responsible for the events
4 and happenings alleged in this complaint and for Plaintiffs' injures, damages and the need for the
5 injunctive and equitable remedies prayed for herein.

6 ***Plaintiffs***

7 **Plaintiff Jamie Ortega**

8 8. Plaintiff Jamie Ortega is an adult citizen of the state of California and is domiciled in
9 Hacienda Heights, California.

10 9. Plaintiff Ortega recently accessed www.emanatehealth.org from her desktop computer
11 and used the website to book a medical appointment.

12 10. Plaintiff Ortega has an active Facebook account she regularly accesses using her desktop
13 computer. Plaintiff Ortega reasonably expected that her communications with Emanate via the website
14 were confidential, solely between herself and Emanate, and that such communications would not be
15 transmitted to or intercepted by a third party.

16 11. As described in the factual allegation section below, Emanate sent Plaintiff Ortega's
17 private medical information and individually identifiable information to Facebook when she accessed
18 Emanate's website. Additionally, the information Emanate sent to Facebook was linked to Plaintiff
19 Ortega's Facebook ID.

20 12. Pursuant to the systematic process described in the factual allegation section below,
21 Emanate assisted Facebook with intercepting Plaintiff Ortega's communications, including those that
22 contained personally identifiable information, protected health information, and related confidential
23 information. Emanate assisted these interceptions without Plaintiff Ortega's knowledge, consent, or
24 express written authorization.

25 13. By failing to receive the requisite consent, Emanate breached confidentiality and
26 unlawfully disclosed Plaintiff Ortega's personally identifiable information and protected health
27 information.
28

1 **Plaintiff Sally Shively**

2 14. Plaintiff Sally Shively is an adult citizen of the state of California and is domiciled in
3 Upland, California.

4 15. Plaintiff Shively recently accessed www.emanatehealth.org on her smartphone and used
5 the website to review her medical records. Plaintiff Shively reasonably expected that her
6 communications with Emanate via the website were confidential, solely between herself and Emanate,
7 and that such communications would not be transmitted to or intercepted by a third party.

8 16. Plaintiff Shively has an active Facebook account that she regularly accesses using her
9 smartphone.

10 17. As described in the factual allegation section below, Emanate sent Plaintiff Shively's
11 private medical information and individually identifiable information to Facebook when she accessed
12 Emanate's website. Additionally, the information Emanate sent to Facebook was linked to Plaintiff
13 Shively's Facebook ID.

14 18. Pursuant to the systematic process described in the factual allegation section below,
15 Emanate assisted Facebook with intercepting Plaintiff Shively's communications, including those that
16 contained personally identifiable information, protected health information, and related confidential
17 information. Emanate assisted these interceptions without Plaintiff Shively's knowledge, consent, or
18 express written authorization.

19 19. By failing to receive the requisite consent, Emanate breached confidentiality and
20 unlawfully disclosed Plaintiff Shively's personally identifiable information and protected health
21 information.

22 **Plaintiff Betsy Vergara**

23 20. Plaintiff Betsy Vergara is an adult citizen of the state of California and is domiciled in
24 Chino, California.

25 21. Plaintiff Vergara recently accessed www.emanatehealth.org on her laptop and used the
26 website to review her medical records and pay a bill. Plaintiff Vergara reasonably expected that her
27 communications with Emanate via the website were confidential, solely between herself and Emanate,
28 and that such communications would not be transmitted to or intercepted by a third party.

22. Plaintiff Vergara has an active Facebook account that she regularly accesses.

23. As described in the factual allegation section below, Emanate sent Plaintiff Vergara's private medical information and individually identifiable information to Facebook when she accessed Emanate's website. Additionally, the information Emanate sent to Facebook was linked to Plaintiff Vergara's Facebook ID.

24. Pursuant to the systematic process described in the factual allegation section below, Emanate assisted Facebook with intercepting Plaintiff Vergara's communications, including those that contained personally identifiable information, protected health information, and related confidential information. Emanate assisted these interceptions without Plaintiff Vergara's knowledge, consent, or express written authorization.

25. By failing to receive the requisite consent, Emanate breached confidentiality and unlawfully disclosed Plaintiff Vergara's personally identifiable information and protected health information.

Plaintiff Patsyann Sutton

26. Plaintiff Patsyann Sutton is an adult citizen of the state of California and is domiciled in California.

27. Plaintiff Sutton accessed www.emanatehealth.org on her personal devices in 2021, and used the website to research hospital locations and review her health information and test results through the patient portal. Plaintiff Sutton reasonably expected that her communications with Emanate via the website were confidential, solely between herself and Emanate, and that such communications would not be transmitted to or intercepted by a third party.

28. Plaintiff Sutton has an active Facebook account that she regularly accesses.

29. As described in the factual allegation section below, Emanate sent Plaintiff Sutton's private medical information and individually identifiable information to Facebook when she accessed Emanate's website. Additionally, the information Emanate sent to Facebook was linked to Plaintiff Sutton's Facebook ID.

30. Pursuant to the systematic process described in the factual allegation section below, Emanate assisted Facebook with intercepting Plaintiff Sutton's communications, including those that

1 contained personally identifiable information, protected health information, and related confidential
2 information. Emanate assisted these interceptions without Plaintiff Sutton's knowledge, consent, or
3 express written authorization.

4 31. By failing to receive the requisite consent, Emanate breached confidentiality and
5 unlawfully disclosed Plaintiff Sutton's personally identifiable information and protected health
6 information.

7 **Plaintiff Mary Perez**

8 32. Plaintiff Mary Perez is an adult citizen of the state of California and is domiciled in
9 California.

10 33. In or about August 2023, Plaintiff Perez accessed www.emanatehealth.org on her
11 personal devices and used the website to research her symptoms/conditions, doctors, and hospital
12 locations on the Website. She also used the patient portal on Defendant's Website to review her health
13 information, test results, and messages from her doctors.

14 34. Plaintiff Perez reasonably expected that her communications with Emanate via the
15 website were confidential, solely between herself and Emanate, and that such communications would
16 not be transmitted to or intercepted by a third party.

17 35. Plaintiff Perez has an active Facebook account that she regularly accesses.

18 36. As described in the factual allegation section below, Emanate sent Plaintiff Perez's
19 private medical information and individually identifiable information to Facebook when she accessed
20 Emanate's website. Additionally, the information Emanate sent to Facebook was linked to Plaintiff
21 Perez's Facebook ID.

22 37. Pursuant to the systematic process described in the factual allegation section below,
23 Emanate assisted Facebook with intercepting Plaintiff Perez's communications, including those that
24 contained personally identifiable information, protected health information, and related confidential
25 information. Emanate assisted these interceptions without Plaintiff Perez's knowledge, consent, or
26 express written authorization.

1 38. By failing to receive the requisite consent, Emanate breached confidentiality and
2 unlawfully disclosed Plaintiff Perez’s personally identifiable information and protected health
3 information.

4 **Plaintiff Stefanie Diamond**

5 39. Plaintiff Stefanie Diamond is an adult citizen of the state of California and is domiciled
6 in Covina, California.

7 40. In 2023, Plaintiff Diamond accessed www.emanatehealth.org on her personal devices
8 and used the Website to search for her test results, symptoms/conditions, possible treatments, doctors,
9 and billing information. She also used the patient portal on the Defendant’s Website to review test
10 results.

11 41. Plaintiff Diamond reasonably expected that her communications with Emanate via the
12 website were confidential, solely between herself and Emanate, and that such communications would
13 not be transmitted to or intercepted by a third party.

14 42. Plaintiff Diamond has an active Instagram¹ account that she regularly accesses.

15 43. As described in the factual allegation section below, Emanate sent Plaintiff Diamond’s
16 private medical information and individually identifiable information to Facebook/Instagram when she
17 accessed Emanate’s website. Additionally, the information Emanate sent to Facebook/Instagram was
18 linked to Plaintiff Diamond’s Facebook ID.

19 44. Pursuant to the systematic process described in the factual allegation section below,
20 Emanate assisted Facebook/Instagram with intercepting Plaintiff Diamond’s communications, including
21 those that contained personally identifiable information, protected health information, and related
22 confidential information. Emanate assisted these interceptions without Plaintiff Diamond’s knowledge,
23 consent, or express written authorization.

24 45. By failing to receive the requisite consent, Emanate breached confidentiality and
25 unlawfully disclosed Plaintiff Diamond’s personally identifiable information and protected health
26 information.

27
28 ¹ Facebook acquired Instagram in 2012. *Facebook Buys Instagram for \$1 Billion*,
<https://archive.nytimes.com/dealbook.nytimes.com/2012/04/09/facebook-buys-instagram-for-1-billion/>.

1 **FACTUAL ALLEGATIONS**

2 **A. Background of the California Invasion of Privacy Act**

3 46. The California Invasion of Privacy Act, Cal. Penal Code § 630 *et seq.*, (“CIPA”),
4 prohibits aiding or permitting another person to willfully, and without the consent of all parties to a
5 communication, read or learn the contents or meaning of any message, report, or communication while
6 the same is in transit or passing over any wire, line, or cable, or is being sent from or received at any
7 place within California.

8 47. To establish liability under section 631(a), Plaintiffs need only establish that Emanate,
9 “by means of any machine, instrument, contrivance, or in any other manner,” does any of the following:

10 Intentionally taps, or makes any unauthorized connection, whether physically,
11 electrically, acoustically, inductively or otherwise, with any telegraph or telephone wire,
12 line, cable, or instrument, including the wire, line, cable, or instrument of any internal
telephonic communication system; or

13 Willfully and without the consent of all parties to the communication, or in any
14 unauthorized manner, reads or attempts to read or learn the contents or meaning of any
message, report, or communication while the same is in transit or passing over any wire,
line or cable or is being sent from or received at any place within this state; or

15 Uses, or attempts to use, in any manner, or for any purpose, or to communicate in any
16 way, any information so obtained; or

17 Aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or
18 permit, or cause to be done any of the acts or things mentioned above in this section.

19 48. Violations of CIPA are not limited to phone lines, but also apply to “new technologies”
20 such as computers, the Internet, and email. *See Matera v. Google Inc.*, 2016 WL 8200619, at *21 (N.D.
21 Cal. Aug. 12, 2016) (CIPA applies to “new technologies” and must be construed broadly to effectuate
22 its remedial purpose of protecting privacy); *Bradley v. Google, Inc.*, 2006 WL 3798134, at *5-6 (N.D.
23 Cal. Dec. 22, 2006) (CIPA governs “electronic communications”); *In re Facebook, Inc. Internet*
24 *Tracking Litigation*, 956 F.3d 589 (9th Cir. 2020) (reversing dismissal of CIPA and common law privacy
claims based on Facebook’s collection of consumers’ internet browsing history).

25 49. CIPA affords a private right of action to any person who has been subjected to a
26 violation of the statute to seek injunctive relief and statutory damages of \$5,000 per violation, regardless
27 of whether they suffered actual damages. Cal. Penal Code § 637.2.
28

B. Background of the CMIA

50. Pursuant to the California Confidentiality of Medical Information Act (“CMIA”), “A provider of health care . . . shall not disclose medical information regarding a patient of the provider of health care . . . without first obtaining an authorization, except as provided in subdivision (b) or (c).” § 56.10(a).² “An authorization for the release of medical information . . . shall be valid if it:

(a) Is handwritten by the person who signs it or is in a typeface no smaller than 14-point type.

(b) Is clearly separate from any other language present on the same page and is executed by a signature which serves no other purpose than to execute the authorization.

(c) Is signed and dated . . .

(d) States the specific uses and limitations on the types of medical information to be disclosed.

(e) States the name or functions of the provider of health care, health care service plan, pharmaceutical company, or contractor that may disclose the medical information.

(f) States the name or functions of the persons or entities authorized to receive the medical information.

(g) States the specific uses and limitations on the use of the medical information by the persons or entities authorized to receive the medical information.

(h) States a specific date after which the provider of health care, health care service plan, pharmaceutical company, or contractor is no longer authorized to disclose the medical information.

(i) Advises the person signing the authorization of the right to receive a copy of the authorization.

Cal. Civ. Code § 56.11.

51. Moreover, a health care provider that maintains information for purposes covered by the CMIA is liable for negligent disclosures that arise as the result of an affirmative act—such as implementing a system that records and discloses online patients personally identifiable information and protected health information. Cal. Civ. Code § 56.36(c).³ Similarly, if a negligent release occurs and

² Subdivisions (b) and (c) are not relevant to this case but permit the disclosure of medical information in situations where a government investigation or lawsuit is taking place. For example, Emanate could bypass the authorization requirement if patient medical information was requested pursuant to a lawful court order or by a party to a proceeding before a court or administrative agency pursuant to a subpoena. *See* 56.10(b)(3) and 56.10(b)(6).

³ “Every provider of health care ... who creates, maintains, preserves, stores, abandons, destroys, or disposes of medical information shall do so in a manner that preserves the confidentiality of the

1 medical information concerning a patient is improperly viewed or otherwise accessed, the individual
2 need not suffer actual damages. Cal. Civ. Code § 56.36(b).

3 52. “In addition to any other remedies available at law, any individual may bring an action
4 against any person or entity who has negligently released confidential information or records concerning
5 him or her in violation of this part, for either or both of the following: [¶] (1) ... nominal damages of one
6 thousand dollars (\$1,000). In order to recover under this paragraph, it shall not be necessary that the
7 plaintiff suffered or was threatened with actual damages. [¶] (2) The amount of actual damages, if any,
8 sustained by the patient.” *Sutter Health v. Superior Ct.*, 227 Cal. App. 4th 1546, 1551, 174 Cal. Rptr.
9 3d 653, 656 (2014)(quoting Cal. Civ. Code § 56.36(b).

10 **C. Emanate’s Website**

11 53. Emanate employs more than 600 primary care and specialist physicians and has a total
12 of 623 beds between its 3 hospitals (Inter-Community Hospital, Queen of the Valley Hospital, and
13 Foothill Presbyterian Hospital).

14 54. Emanate offers a full range of medical services, including primary and outpatient care
15 and specializes in behavioral health, emergency medicine, maternal fetal medicine, women’s health,
16 neurology and stroke care, cardiology, and more.

17 55. Emanate’s website, www.emanatehealth.org, is accessible on mobile devices and
18 desktop computers and allows patients to search for physicians, specialists, various medical information,
19 medical services, pay for medical services, sign up to support groups, and more. As a result, patients
20 communicate their medical information via the site, including private and confidential information
21 regarding their medical conditions and treatment.

22 56. Emanate also publishes a Notice of Privacy Practices on its website (“Privacy
23 Policy”).⁴ Emanates Privacy Policy represents to its patients that “[w]e understand that medical/mental
24 health information about you and your health is personal and are committed to protecting
25 medical/mental information about you.” Emanate also reassures it patients that it is legally required to
26

27 information contained therein. Any provider of health care ... who negligently creates, maintains,
28 preserves, stores, abandons, destroys, or disposes of medical information shall be subject to the remedies
and penalties provided under subdivisions (b) and (c) of Section 56.36.” (§ 56.101, subd. (a).)

⁴ <https://www.emanatehealth.org/notice-of-privacy-practices/>

1 “[m]ake sure that medical/mental health information that identifies you is kept private.” Emanate also
2 informs patients how and when it may disclose their confidential information, including that it requires
3 their express authorization to share that information with non-medical providers. Emanate also provides
4 its patients with a HIPAA privacy notice which similarly promises to keep patient information
5 confidential unless authorized by the patient. However, as demonstrated below, Emanate fails to comply
6 with its privacy obligations.

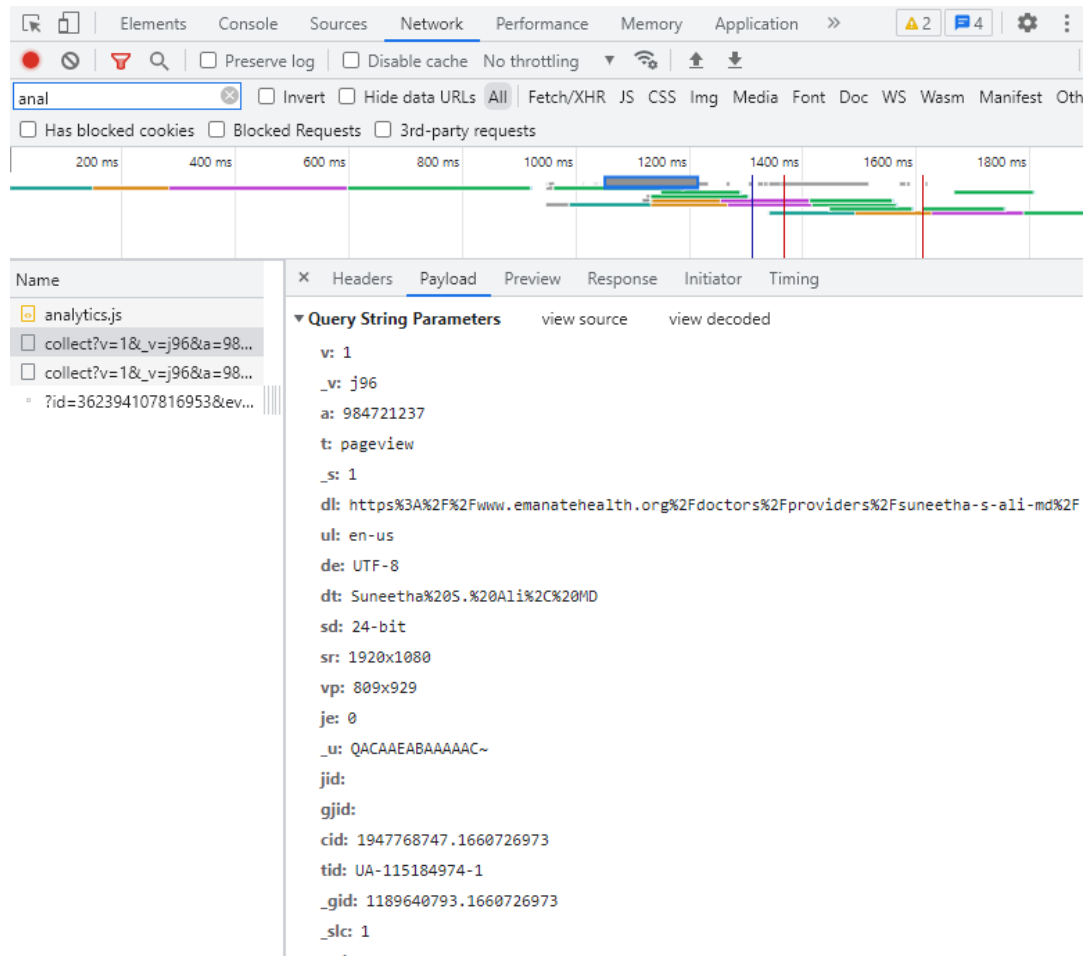
7 57. Unbeknownst to patients, while using these online services, Emanate’s website
8 surreptitiously shares private patient medical information and personally identifiable information with
9 Facebook. Emanate embeds Facebook’s Tracking Pixel into the pages of its website, allowing it to
10 monitor how patients and visitors interact with its website. The pixel, developed by Facebook, tracks
11 users as they navigate through the website and logs which pages are visited, which buttons are clicked,
12 specific information users enter into forms (e.g., name, home address, phone number, email address),
13 search queries (e.g., “do I have covid”), and other information including a patient’s IP address.⁵ As more
14 fully explained below, this information is collected not just by Emanate but also by Facebook because
15 the embedded pixel simultaneously transmits all the information Emanate receives, sending it to
16 Facebook. If the patient is also a Facebook user, Facebook in turn links the information they receive to
17 the patient’s Facebook profile, which includes other identifying information.

18 58. On information and belief, Emanate also uses Facebook’s Conversion API tool
19 (“CAPI”) to transmit its web users’ data in conjunction with the Facebook Tracking Pixel.

20 59. Additionally, Emanate is using the “Google Analytics” tracker and sharing website
21 users’ IP addresses alongside their private patient information. The information communicated to
22 Google includes, but is not limited to, the types of medical treatment(s) sought, and the name, language,
23 and specialty of the physician(s) with whom patients are seeking treatment. As demonstrated in the
24 image below by the lack of an “aip” parameter, Emanate has not enabled the Anonymize IP feature on
25 its website. As a result, Emanate Health is sharing with Google its patients’ online activity relating to
26
27

28 _____
⁵ <https://developers.facebook.com/docs/meta-pixel/>

1 their private medical treatment, along with patient IP addresses, even when patients have not shared (nor
2 have consented to share) such information.



18 **D. Facebook's Platform and its Business Tools**

19 60. Facebook describes itself as a “real identity platform,”⁶ meaning users are allowed
20 only one account and must share “the name they go by in everyday life.”⁷ To that end, when creating
21 an account, users must provide their first and last name, date of birth, and gender.⁸

26 ⁶ Sam Schechner and Jeff Horwitz, *How Many Users Does Facebook Have? The Company*
27 *Struggles to Figure It Out*, WALL. ST. J. (Oct. 21, 2021).

28 ⁷ FACEBOOK, COMMUNITY STANDARDS, PART IV INTEGRITY AND AUTHENTICITY,
https://www.facebook.com/communitystandards/integrity_authenticity.

⁸ FACEBOOK, SIGN UP, <https://www.facebook.com/>

1 61. In 2021, Facebook generated \$117 billion in revenue.⁹ Roughly 97% of that came
2 from selling advertising space.¹⁰

3 62. Facebook sells advertising space by emphasizing its ability to target users.¹¹
4 Facebook is especially effective at targeting users because it surveils user activity both on and off its
5 site.¹² This allows Facebook to make inferences about users beyond what they explicitly disclose,
6 including their “interests,” “behavior,” and “connections.”¹³ Facebook compiles this information into a
7 generalized dataset called “Core Audiences,” which advertisers use to apply highly specific filters and
8 parameters for their targeted advertisements.¹⁴

9 63. Advertisers can also build “Custom Audiences,”¹⁵ which helps them reach “people
10 who have already shown interest in [their] business, whether they’re loyal customers or people who
11 have used [their] app or visited [their] website.”¹⁶ With Custom Audiences, advertisers can target
12 existing customers directly, and they can also build “Lookalike Audiences,” which “leverages
13 information such as demographics, interests, and behavior from your source audience to find new people
14 who share similar qualities.”¹⁷ Unlike Core Audiences, Custom Audiences and Lookalike Audiences
15 are only available if the advertiser has sent its underlying data to Facebook. This data can be supplied
16
17
18
19

20 ⁹ FACEBOOK, META REPORTS FOURTH QUARTER AND FULL YEAR 2021 RESULTS,
21 <https://investor.fb.com/investor-news/press-release-details/2022/Meta-Reports-Fourth-Quarter-and-Full-Year-2021-Results/default.aspx>

22 ¹⁰ *Id.*

23 ¹¹ FACEBOOK, WHY ADVERTISE ON FACEBOOK,
<https://www.facebook.com/business/help/205029060038706>.

24 ¹² FACEBOOK, ABOUT FACEBOOK PIXEL,
<https://www.facebook.com/business/help/742478679120153?id=1205376682832142>.

25 ¹³ FACEBOOK, AD TARGETING: HELP YOUR ADS FIND THE PEOPLE WHO WILL LOVE YOUR BUSINESS,
<https://www.facebook.com/business/ads/ad-targeting>.

26 ¹⁴ FACEBOOK, EASIER, MORE EFFECTIVE WAYS TO REACH THE RIGHT PEOPLE ON FACEBOOK,
<https://www.facebook.com/business/news/Core-Audiences>.

27 ¹⁵ FACEBOOK, ABOUT CUSTOM AUDIENCES,
<https://www.facebook.com/business/help/744354708981227?id=2469097953376494>.

28 ¹⁶ FACEBOOK, AD TARGETING, HELP YOUR ADS FIND THE PEOPLE WHO WILL LOVE YOUR BUSINESS,
<https://www.facebook.com/business/ads/ad-targeting>.

¹⁷ Facebook, About Lookalike Audiences,
<https://www.facebook.com/business/help/164749007013531?id=401668390442328>.

1 to Facebook by manually uploading contact information for customers or by utilizing Facebook’s
2 “Business Tools.”¹⁸

3 64. As Facebook puts it, the Business Tools “help website owners and publishers, app
4 developers and business partners, including advertisers and others, integrate with Facebook, understand
5 and measure their products and services, and better reach and serve people who might be interested in
6 their products and services.”¹⁹ Put succinctly, Facebook’s Business Tools are bits of code that
7 advertisers can integrate into their website, mobile applications, and servers, thereby enabling Facebook
8 to intercept and collect user activity on those platforms.

9 65. The Business Tools are configured to automatically capture certain data, like when a
10 user visits a webpage, that webpage’s Universal Resource Locator (“URL”) and metadata, or when a
11 user downloads a mobile application or makes a purchase.²⁰ Facebook’s Business Tools can track
12 additional events, including the content a visitor view or purchases, and Facebook’s menu of “standard
13 events” allows advertisers to choose which types of content are tracked.²¹ Advertisers can even create
14 their own tracking parameters by building a “custom event.”²²

15 66. One such Business Tool is the Facebook Tracking Pixel which is a piece of code that
16 advertisers, such as Emanate, can integrate into their website. As the name implies, the Facebook Pixel
17 “tracks the people and type of actions they take” when interacting with the website.²³ When a user
18 accesses a website hosting the Facebook Pixel, Facebook’s software script surreptitiously directs the
19

20 ¹⁸ FACEBOOK, CREATE A CUSTOMER LIST CUSTOM AUDIENCE,
21 <https://www.facebook.com/business/help/170456843145568?id=2469097953376494>; Facebook,
22 Create a Website Custom Audience, <https://www.facebook.com/business/help/1474662202748341?id=2469097953376494>.

23 ¹⁹ FACEBOOK, THE FACEBOOK BUSINESS TOOLS,
<https://www.facebook.com/help/331509497253087>.

24 ²⁰ See FACEBOOK, FACEBOOK PIXEL, ACCURATE EVENT TRACKING, ADVANCED,
<https://developers.facebook.com/docs/facebook-pixel/advanced/>; *see also* FACEBOOK, BEST PRACTICES
25 FOR FACEBOOK PIXEL SETUP, <https://www.facebook.com/business/help/218844828315224?id=1205376682832142>; FACEBOOK, APP
EVENTS API, <https://developers.facebook.com/docs/marketing-api/app-event-api/>.

26 ²¹ FACEBOOK, SPECIFICATIONS FOR FACEBOOK PIXEL STANDARD EVENTS,
<https://www.facebook.com/business/help/402791146561655?id=1205376682832142>.

27 ²² FACEBOOK, ABOUT STANDARD AND CUSTOM WEBSITE EVENTS,
<https://www.facebook.com/business/help/964258670337005?id=1205376682832142>; *see also*
28 FACEBOOK, APP EVENTS API, <https://developers.facebook.com/docs/marketing-api/app-event-api/>.

²³ FACEBOOK, RETARGETING, <https://www.facebook.com/business/goals/retargeting>.

1 user's browser to send a separate message to Facebook's servers. This second, secret transmission
2 contains the original GET request that was sent to the host website and any additional data that the
3 Facebook Pixel is configured to collect. Facebook's code initiates this second transmission
4 simultaneously as communications occur with the host website. Thus, two sets of code are automatically
5 created as part of the browser's attempt to load and read Emanate's website—Emanate's own code, and
6 Facebook's embedded code.

7 67. An example illustrates the point. Take an individual who navigates to Defendant's
8 website and clicks on a tab for addiction medicine. When that tab is clicked, the individual's browser
9 sends a GET request to Defendant's server requesting that server to load the particular webpage.
10 Because Emanate utilizes the Facebook Pixel, Facebook's embedded code, written in JavaScript, sends
11 secret instructions back to the individual's browser, without alerting the individual that this is happening.
12 Facebook causes the browser to secretly duplicate the communication with Emanate, transmitting it to
13 Facebook's servers, alongside additional information that transcribes the communication's content and
14 the individual's identity.

15 68. After collecting and intercepting this information, Facebook processes it, analyzes it,
16 and assimilates it into datasets like Core Audiences and Custom Audiences.

17 **E. How Emanate Discloses Plaintiffs' and Class Members' Protected Health Information and**
18 **Assists with Intercepting Communications**

19 69. Through the Facebook Pixel, Emanate shares its patients' identities and online
20 activity, including information and search results related to their private medical treatment.

21 70. Web browsers are software applications that allow consumers to navigate the web and
22 exchange electronic communications over the internet, and every "client device" (computer, tablet, or
23 smart phone) has a web browser (e.g., Google's Chrome browser, Mozilla's Firefox browser, Apple's
24 Safari browser, and Microsoft's Edge browser).

25 71. Correspondingly, every website is hosted by a computer "server" which allows the
26 website's owner (Defendants) to display the Website and exchange communications with the website's
27 visitors (Plaintiff and Class Members) via the visitors' web browser.

1 72. When a patient uses Defendant’s website and undertakes various actions, the patient
2 and Defendant are engaged in an ongoing back-and-forth exchange of electronic communications taking
3 place via the patient’s web browser and Defendant’s computer server.

4 73. These communications are invisible to ordinary consumers²⁴ because they consist of
5 HTTP Requests and HTTP Responses, and one browsing session may consist of thousands of individual
6 HTTP Requests and HTTP Responses.

- 7 • **HTTP Request:** an electronic communication sent from the website visitor’s browser to the
8 website’s corresponding server. In addition to specifying a particular URL (i.e., web
9 address), “GET” HTTP Requests can also send data to the host server, including cookies. A
10 cookie is a small text file that can be used to store information on the client device which can
11 later be communicated to a server or servers. Some cookies are “third-party cookies” which
12 means they can store and communicate data when visiting one website to an entirely different
13 website.
- 14 • **HTTP Response:** an electronic communication that is sent as a reply to the client device’s
15 web browser from the host server in response to an HTTP Request. HTTP Responses may
16 consist of a web page, another kind of file, text information, or error codes, among other
17 data.

18 74. A patient’s HTTP Request essentially asks the Defendant’s website to retrieve certain
19 information (such as a “Find a Doctor” page), and the HTTP Response renders or loads the requested
20 information in the form of “Markup” (the pages, images, words, buttons, and other features that appear
21 on the patient’s screen as they navigate Defendants’ Webpage(s)).

22 75. Every webpage is comprised of both Markup and “Source Code.” Source Code is
23 simply a set of instructions that commands the website visitor’s browser to take certain actions when
24 the web page first loads or when a specified event triggers the code.

25 76. For example, patients can use www.emanatehealth.org to search for a doctor by
26 selecting the “Find a Doctor” button the patient’s browser automatically sends an HTTP Request to
27

28 ²⁴ See HHS Bulletin § *What is a tracking technology?* (“Tracking technologies collect information and track users in various ways, many of which are not apparent to the website or mobile app user.”).

1 Defendant's web server. Defendant's web server automatically returns an HTTP Response, which loads
2 the Markup for that particular webpage and takes them to the "Find a Doctor" page. From there, an
3 additional menu allows patients to refine their search results based on a doctor's specialty, name, spoken
4 language, facility, and practice group. Patients who allow the website to access their location can also
5 narrow their search results to doctors that are located close to them. If a patient adjusts any of the search
6 parameters, the search criteria is sent directly to Facebook alongside the patient's FID. Thus, the
7 information Facebook receives and associates with a Facebook ID or other personally identifiable
8 information, may include the patient's home address, preferred radius and search location, and the
9 doctor's specialty, name, and gender. As depicted below, the user only sees the Markup, not Defendants'
10 Source Code or underlying HTTP Requests and Responses.

11 77. The images below demonstrate how communications between patients and Emanate
12 are sent to Facebook. In Figure 1, a patient has used the search features in order to identify a Spanish
13 speaking doctor that specializes in infectious diseases, accepts patients from Emanate Health Foothills
14 Presbyterian Hospital, and is part of Emanate Health Independent Physician group. When the patient
15 clicks on the profile page for Dr. Sohanjeet Bassi, all of this information is sent to Facebook. (See Figure
16 2).



REFINE YOUR SEARCH

DOCTORS

Infectious disease X Emanate Health Independent Physician Association
Emanate Health Foothill Presbyterian Hospital X Reset filter

SPECIALTY

Infectious disease X

Choose specialty

DOCTOR NAME

Search by doctor name

DISTANCE

ZIP code or your location

LANGUAGE

Spanish X

FACILITY

Emanate Health Foothill Presbyterian X

GROUP

Emanate Health Independent Physi... X



Sohanjeet S. Bassi, MD

Infectious disease

Foothill Infectious Disease
935 W. Foothill Blvd.
Claremont, CA

626.851.8880



Karen Michelle U. Guiang, DO

Infectious disease

Foothill Infectious Disease
935 W. Foothill Blvd.
Claremont, CA

626.851.8880

Figure 1. The “Refine Your Search” menu allows patients to filter their search results based on criteria that is unique to them, including location and medical conditions.

78. Figure 2 below demonstrates that Emanate sends its patients’ private and sensitive search and health information to Facebook.

+ https://www.facebook.com/tr/?id=362394107816953&ev=Microdata&dl=https%3A%2F%2FWww.emanatehealth.org%2Fdoctors%2Fproviders%2Fsohanjeet-s-bassi-md&furl=https%3A%2F%2FWww.emanatehealth.org%2Fdoctors%2F%3ASpecialty%2FC2Infectious%2520Disease%26group%3DEmanate%2520Health%2520Independent%2520Physician%2520Association%26language%3DSpanish%26facility%3DEmanate%2520Health%2520Foothill%2520Presbyterian%2520Hospital&if=false&its=1644314706111&cld[DataLayer]=%5B%5D&cld[MetaJ]=%7B%22title%22%3A%22Sohanjeet%20S.%20Bassii%2C%20MD%20%27C%20Emanate%20Health%22%2C%22meta%3Akeywords%22%3A%22%22%27D&cld[OpenGraph]=%7B%22og%3Atitle%22%3A%22Sohanjeet%20S.%20Bassii%2C%20MD%22%2C%22og%3ATYPE%22%3A%22article%22%2C%22og%3Aurl%22%3A%22https%3A%2F%2FWww.emanatehealth.org%2Fdoctors%2Fproviders%2Fsohanjeet-s-bassi-md&f%22%27D&cld[Schema.org]=%5B%5D&cld[JSON-LD]=%5B%7B%22%40context%22%3A%22http%3A%2F%2FSchema.org%22%2C%22%40type%22%3A%22Physician%22%2C%22name%22%3A%22Sohanjeet%20S.%20Bassii%2C%20MD%22%2C%22url%22%3A%22https%3A%2F%2FWww.emanatehealth.org%2Fdoctors%2Fproviders%2Fsohanjeet-s-bassi-md%22%2C%22image%22%3A%22https%3A%2F%2Fres.cloudinary.com/fdpmkyksih%22%2C%22Image%22%3A%22https%3A%2F%2Fmedia%2F1593%2FBassi-sohanjeet-md.jpg%22%2C%22telephone%22%3A%22626.851.8880%22%2C%22address%22%3A%22%3A%22name%22%3A%22Foothill%22%2C%22Infectious%20Disease%22%2C%22streetAddress%22%3A%22935%20W.%20Foothill%20Blvd.%22%2C%22addressLocality%22%3A%22Claremont%22%2C%22addressRegion%22%3A%22CA%22%2C%22postalCode%22%3A%2291711%22%2C%22addressCountry%22%3A%22US%22%27D%5D%2C%22geo%22%3A%22%40type%22%3A%22GeoCoordinates%22%2C%22latitude%22%3A%2234.1073466%22%2C%22longitude%22%3A%22-117.7344405%22%27D%5D%sw=1920&sh=1080&v=2.9.52&r=stable&ec=160=306fbp=fb.1.164423583463.1178076527&it=16443147055718coo=false&es=automatic&ctm=3&exp=p0&rgm=GET

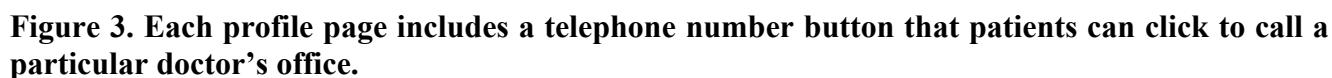
HEADERS

```
+ accept: image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8
+ accept-encoding: gzip, deflate, br
+ accept-language: en-US,en;q=0.9
+ connection: keep-alive
+ cookie: sb=SvrAYl-zBPWxOJCpvXZ9ml7I; datr=TfgAYlqiHi4jVryDzrliLcGy;
  c_user=10007 dpr=1; xs=38%3A932DxBYECc7iQQ%3A2%3A1644230780%3A-1%3A-1%3A%3AACUga_w9x6fXRr1I20--LnWJetuxLGks8kzUXC44Kgg;
  fr=0AwTXvwdhPqTvkEh3.AWXMudismkphE-
  ml7eH7WhwmIyM.BiAiTE.e3.AAA.0.0.BiAiTE.AWWUeKw43HI
  www.facebook.com
```

Figure 2. In this example, the patient information was communicated to Facebook when the patient clicked on Dr. Bassi's profile page.

79. As demonstrated in Figure 2, the search parameters set by the patient and the patient's FID number are being shared together, thereby allowing the recipient, Facebook, to make the direct connection between the search parameters and each individual patient's FID.

80. Emanate's website also give patients the option to call a specific doctor from the doctor's online profile page. Each profile page is equipped with a phone call button that provides a direct link to the doctor's office. As shown in Figure 4 below, when patients click the telephone number button to call the doctor's office, the patient's click is shared with Facebook alongside the patient's FID.



```
HEADERS
+ accept: image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8
+ accept-encoding: gzip, deflate, br
+ accept-language: en-US,en;q=0.9
+ connection: keep-alive
+ cookie: sb=SvøAYl-zBPWxOJCovXZ9ml7I; datr=TfgAYlqiHi4jVryDzrliLcGy;
  c_user=10007 dpr=1;
  xs=38%3A932DXBYECc7lQQ%3A2%3A1644230780%3A-1%3A-1%3A%3AAcUga_w9x6rXRi120--LnWJetuxLGKs8kzUXC4kKg;
  fr=0AwTxxvdhPqTvkEh3.AWXMudismkphE-
  ml7eH7WhwmIyM.BiAiTE.e3.AAA.0.0.BiAiTE.AWWUeKw43HI
+ host: www.facebook.com
```

Figure 4. An HTTP single communication session is automatically from the patient's device to Facebook, which reveals that the patient clicked on the telephone number button. This information is included alongside the patient's FID (c user field).

81. Emanate also gives patients the option to register for classes and support groups, and that information is shared with Facebook.

82. When a patient selects a class or support group and clicks the “Register” button, the title of the class or support group is shared with Facebook alongside the patient’s FID. (See Figure 6 below).

Mom2Mom: Breast-Feeding Support Group (In-Person)

Tuesday, March 1, 2022 at 10:00 AM

[Add to calendar](#)

For the Maternity Tours, Prenatal Breastfeeding Class and Mom to Mom Support group, all attendees must be fully vaccinated and/or show proof of a PCR or Antigen negative COVID test within 72 hours prior to the class. Self-administered tests are not accepted.

Moms come together with their babies to offer support with one another and receive breast-feeding training from a certified lactation staff. All are welcome. This class is NOT exclusive to moms who delivered at Queen of the Valley Hospital

To sign up, choose a time and click "Register."

Tuesday, March 1, 2022 at 10:00 AM

Register

Time: 10:00 AM - 11:30 AM
Pacific Standard Time

Location: FBNC Conference Room

Cost: Free

Phone: 626.851.2753

Figure 5. Patients use Emanate’s website to register for classes and support groups.

```
+ https://www.facebook.com/tr/?id=362394107816953&ev=Microdata&dl=https%3A%2F%2Fwww.emanatehealth.org%2Fcalendar%2Fbreast-feeding-class-registration%2F%3Fcalendarid%3D12186%26c
alendardate%3D20220301100000&rl=https%3A%2F%2Fwww.emanatehealth.org%2Fcalendar%2Fevents%
2Fmom2mom-breast-feeding-support-group-in-person%2F&if=false&ts=1644323340571&cd[DataLay
er]=%5B%5D&cd[meta]=%7B%22title%22%3A%22Breast-Feeding%20class%20registration%20%7C%20Em
anate%20Health%22%2C%22meta%3Akeywords%22%3A%22%22%2C%22meta%3Adescription%22%3A%22Regis
ter%20for%20a%20breast-feeding%20class%20at%20Emanate%20Health.%22%7D&cd[OpenGraph]=%7B%
22og%3Atitle%22%3A%22Breast-Feeding%20class%20registration%22%2C%22og%3Adescription%22%3
A%22Register%20for%20a%20breast-feeding%20class%20at%20Emanate%20Health.%22%2C%22og%3Aty
pe%22%3A%22article%22%2C%22og%3Aurl%22%3A%22https%3A%2F%2Fwww.emanatehealth.org%2Fcalend
ar%2Fbreast-feeding-class-registration%2F%22%7D&cd[Schema.org]=%5B%5D&cd[JSON-LD]=%5B%5D
&sw=1920&sh=1080&v=2.9.52&r=stable&ec=1&o=30&fbp=fb.1.1644235834463.1178076527&it=164432
3340035&coo=false&es=automatic&tm=3&exp=p0&rqm=GET
```

HEADERS

```
+ accept: image/avif,image/webp,image/apng,image/svg+xml,image/*,*/*;q=0.8
+ accept-encoding: gzip, deflate, br
+ accept-language: en-US,en;q=0.9
+ connection: keep-alive
+ cookie: sb=SvgAYL-zBPWXQJCpvXZ9mL7I; datr=TfgAYLqiHi4jVryDzrliLcGy;
c_user=10007 dpr=1;
xs=38%3A932DxBYECC7iQQ%3A2%3A1644230780%3A-1%3A-
1%3A%3AAcUga_w9x6rXRi120--LnWJetuxLGks8kzUXC44Kgg;
fr=0AWtXvwdhPqTvkEh3.AWXMudismkphE-
mL7eH7WhwmIyM.BiAiTE.e3.AAA.0.0.BiAiTE.AWWUeKw43HI
```

Figure 6. An HTTP single communication session is automatically sent to Facebook, revealing the patient clicked on the registration button for the “mom2mom breast feeding support group in person.” This is sent alongside the patient’s FID (c_user field).

83. Next, after clicking the "Register" button, patients are directed to complete an online registration form. Once patients have filled out the form and clicked the "submit" button, their selection

is immediately communicated and shared with Facebook, along with patient's FID. (See Figures 7 through 9 below).

The screenshot shows the 'Breast-Feeding class registration' form on the Emanate Health website. The header includes the Emanate Health logo and navigation links for Doctors, Locations, Services, and Foundation. The form is divided into two main sections: 'Event Info' and 'Personal Information'. The 'Event Info' section includes a dropdown for 'Day *' (March 1, 2022) and a text box for 'Event occurrence *' (10:00 AM at FBNC Conference Room). Below this, the event is identified as 'Mom2Mom: Breast-Feeding Support Group (In-Person)' with a date and time of 'Tuesday, March 1, 2022 at 10:00 AM (Pacific Standard Time)' and a location of 'FBNC Conference Room'. The 'Personal Information' section contains several required fields: 'First *' and 'Last *' (both with red asterisks and 'First is required'/'Last is required' error messages), 'Email *', 'Birth year *', 'Phone number *', 'City *', 'Zip code *', 'Who is your OB/GYN physician? *', and 'How did you hear about us? *' (with a dropdown arrow). All fields are currently empty.

Figure 7. In order to register for the class, patients must enter their personal information in the class registration form.

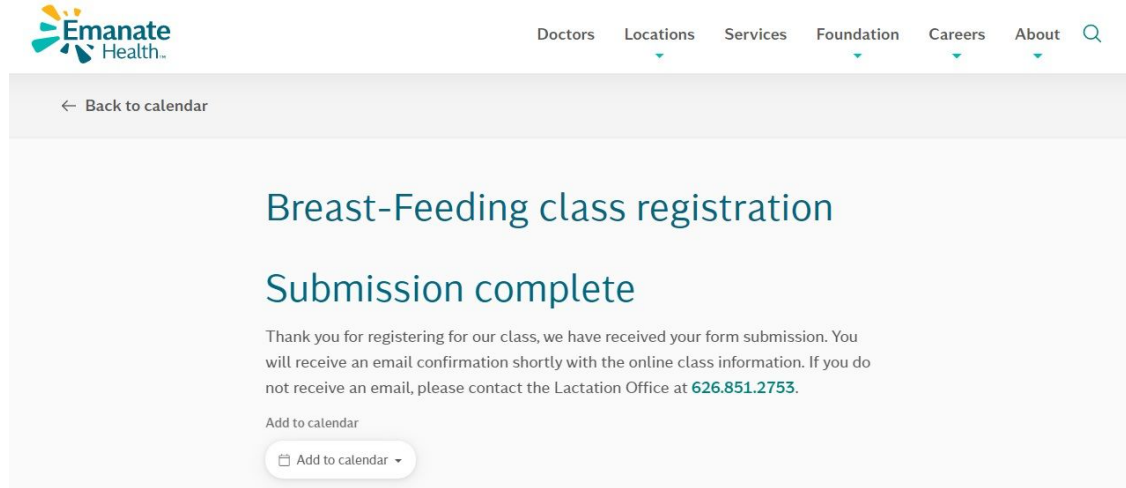


Figure 8. Patients are redirected to the page above once they complete the class registration form.

```
sb=SvgAYl-zBPWXQJCpvXZ9m17I; datr=TfgAYlqiHi4jVryDzrlilcGy; c_user=1000711111111111 dpr=1;
xs=38%3A932DxBYECc7iQQ%3A2%3A1644230780%3A-1%3A-1%3A%3AAcUga_w9x01xK1120-LnwJctuxL6ks8kzUXC44Kgg;
fr=0AWtXvwdhPqTvkEh3.AWXMudismkphE-m17eH7WhwmIyM.BiAiTE.e3.AAA.0.0.BiAiTE.AWWUeKw43HI
www.facebook.com
https://www.emanatehealth.org
https://www.emanatehealth.org/
" Not;A Brand";v="99", "Google Chrome";v="97", "Chromium";v="97"
?0
n:
  "Windows"
  iframe
  navigate
  cross-site
  ?1
requests: 1
  Mozilla/5.0 (Windows NT 10.0; Win64; x64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/97.0.4692.99

2.6 kB Text

953&ev=SubscribedButtonClick&dl=https%3A%2F%2Fwww.emanatehealth.
2 breast-feeding-class-registration%2F%3Fcalendarid%3D12186%26calendardate%3D20220301100000&rl=https%3A%2F%2Fwww.emanateh
2Fevents%2Fmom2mom-breast-feeding-support-group-in-person%2F&if=false&ts=1644327483800&
res%5D=%7B%22classList%22%3A%22fb-form__nav-button+is-submit+btn+btn-lg+btn-primary%22%2C%22destination%22%3A%22http
2Fbreast-feeding-class-registration%2F%3Fcalendarid%3D12186%26calendardate%3D20220301100000%22%2C%22id%22%3A%22%22%2C%22i
%3A%22Submit%22%2C%22numChildButtons%22%3A0%2C%22tag%22%3A%22button%22%2C%22name%22%3A%22%22%2C%22value%22%3A%22%22%7D&
%5D=Submit&
```

Figure 9. An HTTP single communication session is automatically sent from the patient’s device to Facebook, which reveals that the patient registered for the “mom2mom breastfeeding support group in person.” This information is communicated alongside the patient’s FID (c_user field). Other phrases are also communicated to Facebook, including the event date and phrase “obgyn-dr.”

84. To make matters worse, Emanate’s homepage contains a search bar and any information the patient types into that search bar is automatically shared with Facebook alongside the patient’s FID. (See Figures 10 through 12 below).



Doctors Locations Services Foundation Careers About

Don't delay your care
Your health and safety
is our mission

What can we help you find?



Find a doctor



Contact us



Health library



Careers



Bill pay



Health Portal



Figure 10. Emanate's homepage contains a search bar where patients can type anything they want, including sensitive personal health information and other confidential queries.



Doctors Locations Services Foundation Careers About

All

Depression during pregnancy



Search Results

Depression during pregnancy

<https://www.emanatehealth.org/health-library/story/495dc64c-7b54-4552-85c3-b4784a2bc503>

Depression during pregnancy | Emanate Health Health library Back to health library Search health library Search Explore topics Depression during pregnancy For many women, pregnancy is a joyous time...., take steps that can help you feel better again. The negative effects of depression during pregnancy Everyone—including moms-to-be—has a down day now and then. But depression is worse...of Dimes, depression during pregnancy can cause you to: Eat poorly. Not gain enough weight. Have trouble sleeping. Miss prenatal visits. Not follow medical instructions. Use harmful substances... ..

Depression during pregnancy

<https://www.emanatehealth.org/health-library/story/9b12f8a2-29d8-465c-a638-0621ed07ff24>

Depression during pregnancy | Emanate Health Health library Back to health library Search health library Search Explore topics Depression during pregnancy Tell your doctor if you have signs...of depression. If you're depressed, it could affect your baby's health. Many women feel depressed, a bit down or blue after they give birth. But depression can occur during pregnancy as well. This may make...it more difficult for a woman to take care of herself. For instance, according to the Office on Women's Health, depression during pregnancy can cause a woman to: Eat poorly. Not gain enough weight. Have... ..

Figure 11. For example, in the image above, a patient has typed the phrase “depression during pregnancy” into the search bar on Defendant's home page.

Depression%2520during%2520pregnancy&

c_user=10007

85. Every time Emanate sends a patient’s website activity data to Facebook, that patient’s personally identifiable information is also disclosed, including their Facebook ID (“FID”). An FID is a unique and persistent identifier that Facebook assigns to each user. With it, anyone can look up the user’s Facebook profile and name. Notably, while Facebook can easily identify any individual on its Facebook platform with only their unique FID, so too can any ordinary person who comes into possession of an FID. Facebook admits as much on its website. Indeed, ordinary persons who come into possession of the FID can connect it to the corresponding Facebook profile.

86. A user who accesses Emanate's website while logged into Facebook will transmit the c_user cookie to Facebook, which contains that user's unencrypted Facebook ID. When accessing www.emanatehealth.org, for example, Facebook receives seven cookies, six of which are visible in the example here:

presence	C%7B...	.facebook.com
xs	3%3Ar...	.facebook.com
c_user	10003...	.facebook.com
fr	00ZpYJ...	.facebook.com
datr	MalzYj...	.facebook.com
sb	qqAzY...	.facebook.com

Figure 13.

87. When a visitor's browser has recently logged out of an account, Facebook compels the visitor's browser to send a smaller set of cookies.²⁵

fr	00Zp...	.facebook.com
wd	1156...	.facebook.com
sb	qqAz...	.facebook.com
datr	Malz...	.facebook.com

Figure 14.

88. The fr cookie contains, at least, an encrypted Facebook ID and browser identifier.²⁶ Facebook, at a minimum, uses the fr cookie to identify users.²⁷

89. If a visitor has never created an account, an even smaller set of cookies are transmitted.

sb	IAiFYIM_RxZ...	.facebook.com
fr	0mBnQXleH...	.facebook.com

Figure 15.

²⁵ Not pictured here and in the preceding image is the _fbp cookie, which is transmitted as a first-party cookie.

²⁶ DATA PROTECTION COMMISSIONER, FACEBOOK IRELAND LTD, REPORT OF RE-AUDIT (Sept. 21, 2012), http://www.europe-v-facebook.org/ODPC_Review.pdf.

²⁷ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, <https://www.facebook.com/policy/cookies/>.

90. At each stage, Defendant also utilizes the _fbp cookie, which attaches to a browser as a first-party cookie, and which Facebook uses to identify a browser and a user.²⁸



Figure 16.

91. The fr cookie expires after 90 days unless the visitor's browser logs back into Facebook.²⁹ If that happens, the time resets, and another 90 days begins to accrue.³⁰

92. The _fbp cookie expires after 90 days unless the visitor's browser accesses the same website.³¹ If that happens, the time resets, and another 90 days begins to accrue.³²

93. The Facebook Tracking Pixel uses both first- and third-party cookies. A first-party cookie is "created by the website the user is visiting"—*i.e.*, Emanate.³³ A third-party cookie is "created by a website with a domain name other than the one the user is currently visiting"—*i.e.*, Facebook.³⁴ The _fbp cookie is always transmitted as a first-party cookie. A duplicate _fbp cookie is sometimes sent as a third-party cookie, depending on whether the browser has recently logged into Facebook.

94. Facebook, at a minimum, uses the fr, _fbp, and c_user cookies to link to Facebook IDs and corresponding Facebook profiles.

95. As shown in the above figures, Defendant sends these identifiers alongside the event data.

96. Plaintiffs never consented, agreed, authorized, or otherwise permitted Emanate to disclose their personally identifiable information and protected health information and assist with intercepting their communications. Plaintiffs were never provided with any written notice that Emanate

²⁸ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, <https://www.facebook.com/policy/cookies/>.

²⁹ See FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, <https://www.facebook.com/policy/cookies/>.

³⁰ Confirmable through developer tools.

³¹ See FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, <https://www.facebook.com/policy/cookies/>.

³² Also confirmable through developer tools.

³³ PC MAG, FIRST-PARTY COOKIES, <https://www.pcmag.com/encyclopedia/term/first-party-cookie>. This is confirmable by using developer tools to inspect a website's cookies and track network activity.

³⁴ PC MAG, THIRD-PARTY COOKIES, <https://www.pcmag.com/encyclopedia/term/third-party-cookie>. This is also confirmable by tracking network activity.

discloses its website users’ protected health information, nor were Plaintiffs provided any means of opting out of such disclosures. Despite this, Emanate knowingly disclosed Plaintiffs’ protected health information to Facebook.

97. By law, Plaintiffs are entitled to privacy in their protected health information and confidential communications. Emanate deprived Plaintiffs and Class Members of their privacy rights when it: (1) implemented a system that surreptitiously tracked, recorded, and disclosed Plaintiffs’ and Class Members’ confidential communications, personally identifiable information, and protected health information; (2) disclosed patients’ protected information to Facebook—an unauthorized third-party eavesdropper; and (3) undertook this pattern of conduct without notifying Plaintiffs and Class Members and without obtaining their express written consent. Plaintiffs did not discover that Emanate disclosed their personally identifiable information and protected health information to Facebook, and assisted Facebook with intercepting her communications, until July of 2022.

CLASS ACTION ALLEGATIONS

98. **Class Definition:** Pursuant to Section 382 of the Code of Civil Procedure, Plaintiffs bring this action on behalf of themselves and other similarly situated individuals (the “Class”), defined as California citizens who, during the class period, had their personally identifiable information or protected health information improperly disclosed to Facebook as a result of using www.emanatehealth.org.

Plaintiffs reserve the right to modify the class definitions or add sub-classes as necessary prior to filing a motion for class certification.

99. The “Class Period” is the time period beginning on the date established by the Court’s determination of any applicable statute of limitations, after consideration of any tolling, concealment, and accrual issues, and ending on the date of entry of judgement.

100. Excluded from the Class is Emanate; any affiliate, parent, or subsidiary of Emanate; any entity in which Emanate has a controlling interest; any officer director, or employee of Emanate; any successor or assign of Emanate; anyone employed by counsel in this action; any judge to whom this case is assigned, his or her spouse and immediate family members; and members of the judge’s staff.

1 101. Numerosity/Ascertainability. Members of the Class are so numerous that joinder of all
2 members would be unfeasible and not practicable. The exact number of Class Members is unknown to
3 Plaintiff at this time. However, it is estimated that there are thousands of individuals in the Class. The
4 identity of such membership is readily ascertainable from Emanate's records and non-party Facebook's
5 records.

6 102. Typicality. Plaintiffs' claims are typical of the claims of the Class because Plaintiffs used
7 www.emanatehealth.org and had their personally identifiable information and protected health
8 information disclosed to Facebook without their express written authorization or knowledge. Plaintiffs'
9 claims are based on the same legal theories as the claims of other Class Members and Plaintiffs seek the
10 same relief individually as on behalf of the Class Members.

11 103. Adequacy. Plaintiffs are fully prepared to take all necessary steps to represent fairly and
12 adequately the interests of the Class Members. Plaintiffs' interests are coincident with, and not
13 antagonistic to, those of the Class Members. Plaintiffs are represented by attorneys with experience in
14 the prosecution of class action litigation generally and in the emerging field of digital privacy litigation
15 specifically. Plaintiffs' attorneys are committed to vigorously prosecuting this action on behalf of the
16 Class Members.

17 104. Common Questions of Law and Fact Predominate/Well Defined Community of Interest.
18 Questions of law and fact common to the Class Members predominate over questions that may affect
19 only individual Class Members because Defendant has acted on grounds generally applicable to the
20 Class. Such generally applicable conduct is inherent in Defendant's wrongful conduct. The following
21 questions of law and fact are common to the Class:

- 22 (a) Whether Defendant intentionally tapped the lines of internet communication between
23 patients and their medical providers;
- 24 (b) Whether Defendant's website surreptitiously records personally identifiable information,
25 protected health information, and related communications and subsequently, or
26 simultaneously, discloses that information to Facebook;
- 27 (c) Whether Facebook is a third-party eavesdropper;
- 28

- 1 (d) Whether Defendant's disclosures of personally identifiable information, protected health
2 information, and related communications constitute an affirmative act of communication;
- 3 (e) Whether Emanate's conduct, which allowed Facebook to view Plaintiffs' and Class
4 Members' personally identifiable information and protected health information, resulted
5 in a breach of confidentiality;
- 6 (f) Whether Emanate violated Plaintiffs' and Class Members' privacy rights by using
7 Facebook's tracking pixel to record and communicate online patients' FIDs alongside
8 their confidential medical communications;
- 9 (g) Whether Plaintiffs and Class Members are entitled to damages under CIPA, the CMIA,
10 or any other relevant statute;
- 11 (h) Whether Defendant's actions violate Plaintiffs' and Class Members' privacy rights as
12 provided by the California Constitution and at common law;

13 105. Superiority. Class action treatment is a superior method for the fair and efficient
14 adjudication of the controversy. Such treatment will permit a large number of similarly situated persons
15 to prosecute their common claims in a single forum simultaneously, efficiently, and without the
16 unnecessary duplication of evidence, effort, or expense that numerous individual actions would
17 engender. The benefits of proceeding through the class mechanism, including providing injured persons
18 a method for obtaining redress on claims that could not practicably be pursued individually, substantially
19 outweighs potential difficulties in management of this class action. Plaintiffs are unaware of any special
20 difficulty to be encountered in litigating this action that would preclude its maintenance as a class action.

21 **CLAIMS FOR RELIEF**

22 **First Cause of Action**

23 **Violation of the California Invasion of Privacy Act,**

24 **Cal. Penal Code § 630, *et seq.***

25 106. Plaintiffs repeat the allegations contained in the paragraphs above as if fully set forth
26 herein and bring this count individually and on behalf of the proposed Class.

27 107. The California Invasion of Privacy Act ("CIPA") is codified at Cal. Penal Code §§
28 630 to 638. The Act begins with its statement of purpose.

1 The Legislature hereby declares that advances in science and technology have led to the
2 development of new devices and techniques for the purpose of eavesdropping upon
3 private communications and that the invasion of privacy resulting from the continual and
4 increasing use of such devices and techniques has created a serious threat to the free
5 exercise of personal liberties and cannot be tolerated in a free and civilized society.

6 Cal. Penal Code § 630.

7 108. California penal Code § 631(a) provides, in pertinent part:

8 Any person who, by means of any machine, instrument, or contrivance, or in any other
9 manner ... willfully and without the consent of all parties to the communication, or in
10 any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning
11 of any message, report, or communication while the same is in transit or passing over
12 any wire, line, or cable, or is being sent from, or received at any place within this state;
13 or who uses, or attempts to use, in any manner, or for any purpose, or to communicate in
14 any way, any information so obtained, or **who aids, agrees with, employs, or conspires**
15 with any person or persons to unlawfully do, or permit, or cause to be done any of the
16 acts or things mentioned above in this section, is punishable by a fine not exceeding two
17 thousand five hundred dollars (\$2,500).

18 109. A defendant must show it had the consent of all parties to a communication.

19 110. At all relevant times, Defendant aided, agreed with, and conspired with Facebook to
20 track and intercept Plaintiffs' and Class Members' internet communications while accessing
21 www.emanatehealth.org. These communications were intercepted without the authorization and
22 consent of Plaintiffs and Class Members.

23 111. Defendant, when aiding and assisting Facebook's eavesdropping, intended to help
24 Facebook learn some meaning of the content in the URLs and the content the visitor requested.

25 112. The following items constitute "machine[s], instrument[s], or contrivance[s]" under
26 the CIPA, and even if they do not, the Facebook Tracking Pixel falls under the broad catch-all category
27 of "any other manner":
28

- a. The computer codes and programs Facebook used to track Plaintiffs' and Class Members'
communications while they were navigating www.emanatehealth.org;
- b. Plaintiffs' and Class Members' browsers;
- c. Plaintiffs' and Class Members' computing and mobile devices;
- d. Facebook's web and ad servers;

- e. The web and ad-servers from which Facebook tracked and intercepted Plaintiffs' and Class Members' communications while they were using a web browser to access or navigate www.emanatehealth.org;
- f. The computer codes and programs used by Facebook to effectuate its tracking and interception of Plaintiffs' and Class Members' communications while they were using a browser to visit Defendant's website; and
- g. The plan Facebook carried out to effectuate its tracking and interception of Plaintiffs' and Class Members' communications while they were using a web browser or mobile application to visit Defendant's website.

113. Defendant fails to disclose that it is using Facebook Pixel specifically to track and automatically and simultaneously transmit communications to a third party, i.e., Facebook. Defendant is aware that these communications are confidential as its "Notice of Privacy Practices" acknowledges the confidential nature of private medical information and disclaims that it is being shared with unidentified third-parties without Plaintiffs' and Class Members' express authorization.

114. The patient communication information that Defendant transmits while using Facebook Pixel, such as the information patients enter into the search bar, patients' searches for a specialty medical provider, IP addresses, and home addresses constitutes confidential protected health information and personally identifiable information.

115. As demonstrated hereinabove, Defendant violates CIPA by aiding and permitting third parties to receive its patients' online communications through its website without their consent.

116. By disclosing Plaintiffs' and Class Members' Private Health Information, Defendant violated Plaintiffs' and Class Members' statutorily protected right to privacy.

117. As a result of the above violations and pursuant to CIPA Section 637.2, Defendant is liable to the Plaintiffs and Class Members for the greater of treble actual damages related to their loss of privacy in an amount to be determined at trial or for statutory damages in the amount of \$5,000 per violation. Section 637.2 specifically states that "[it] is not a necessary prerequisite to an action pursuant to this section that the plaintiffs has suffered, or be threatened with, actual damages."

118. Under the statute, Defendant is also liable for reasonable attorney’s fees, litigation costs, injunctive and declaratory relief, and punitive damages in an amount to be determined by a jury, but sufficient to prevent the same or similar conduct by the Defendant in the future.

Second Cause of Action

Violation of the California Confidentiality of Medical Information Act

Cal. Civ. Code § 56, *et seq.*

119. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set forth herein and bring this claim individually and on behalf of the proposed Class.

120. The California Confidentiality of Medical Information Act, Cal. Civ. Code § 56, *et seq* (“CMIA”) prohibits health care providers from disclosing medical information relating to their patients without a patient’s authorization. Medical information refers to “any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care... regarding a patient’s medical history, mental or physical condition, or treatment.” 'Individually Identifiable' means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual...” Cal. Civ. Code § 56.05.

121. Emanate is a healthcare provider as defined by Cal. Civ. Code § 56.06.

122. Plaintiffs and Class Members are patients, and, as a health care provider, Emanate has an ongoing obligation to comply with the CMIA’s requirements.

123. As set forth above, names, addresses, telephone numbers, email addresses, device identifiers, web URLs, Internet Protocol (IP) addresses, and other characteristics that can uniquely identify Plaintiffs and Class Members are transmitted to Emanate in combination with patient medical conditions, medical concerns, treatment(s) sought by the patients, doctor appointments, medical specialty of the doctor(s) searched for by patients, prescription drug information and queries, and patient information regarding COVID-19. This is protected health information under the CMIA. This information is intercepted and transmitted to Facebook via Defendant’s knowing and intentional decision to embed enabling software into its website

124. Facebook ID is also an identifier sufficient to allow identification of an individual. Along with patients' Facebook ID, Emanate discloses to Facebook several pieces of information regarding its

1 patients' use of its website, including but not limited to the following: patient medical conditions,
2 medical concerns, treatment(s) sought by the patients, doctor appointments, medical specialty of the
3 doctor(s) searched for by patients, and patient information regarding COVID-19.

4 125. Pursuant to the CMIA, this constitutes medical information because it is patient
5 information derived from a health care provider regarding patients' medical treatment and physical
6 conditions and is combined with individually identifying information. Cal. Civ. Code § 56.05(i).

7 126. As demonstrated hereinabove, Emanate fails to obtain its patients' authorization for the
8 disclosure of medical information and fails to disclose in its Notice of Privacy Practices that it shares
9 protected health information for marketing purposes.

10 127. Pursuant to CMIA Section 56.11, a valid authorization for disclosure of medical
11 information must be: (1) "Clearly separate from any other language present on the same page and is
12 executed by a signature which serves no other purpose than to execute the authorization;" (2) signed
13 and dated by the patient or his representative; (3) state the name and function of the third party that
14 receives the information; (4) state a specific date after which the authorization expires. Accordingly, the
15 information set forth in Emanate's Notice of Privacy Practices does not qualify as a valid authorization.

16 128. Based on the above, Emanate is violating the CMIA by disclosing its patients' medical
17 information to Facebook along with the patients' individually identifying information. Accordingly,
18 Plaintiff and Class Members seek all relief available for Emanate's CMIA violations.

19 129. Plaintiff and members of the Class seek nominal damages, compensatory damages,
20 punitive damages, attorneys' fees and costs of litigation for Defendant's violation of the CMIA.

21 **Third Cause of Action**

22 **Invasion of Privacy Under California's Constitution**

23 130. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set forth
24 herein and bring this claim individually and on behalf of the proposed Class.

25 131. Plaintiffs and Class Members have an interest in: (1) precluding the dissemination and/or
26 misuse of their sensitive, confidential communications and protected health information; and (2) making
27 personal decisions and/or conducting personal activities without observation, intrusion or interference,
28

1 including, but not limited to, the right to visit and interact with various internet sites without being
2 subjected to wiretaps without Plaintiffs' and Class Members' knowledge or consent.

3 132. At all relevant times, by using Facebook's tracking pixel to record and communicate
4 patients' FIDs alongside their confidential medical communications, Emanate intentionally invaded
5 Plaintiffs' and Class Members' privacy rights under the California Constitution.

6 133. Plaintiffs and Class Members had a reasonable expectation that their communications,
7 identity, health information and other data would remain confidential and that Emanate would not install
8 wiretaps on www.emanatehealth.org to secretly transmit their communications to a third party.

9 134. Plaintiffs and Class Members did not authorize Emanate to record and transmit Plaintiffs'
10 and Class Members' private medical communications alongside their personally identifiable health
11 information.

12 135. This invasion of privacy is serious in nature, scope, and impact because it relates to
13 patients' private medical communications. Moreover, it constitutes an egregious breach of the societal
14 norms underlying the privacy right.

15 136. As a result of Defendant's actions, Plaintiffs and Class Members have suffered harm
16 and injury, including but not limited to an invasion of their privacy rights.

17 137. Plaintiffs and Class Members have been damaged as a direct and proximate result of
18 Defendant's invasion of their privacy and are entitled to just compensation, including monetary
19 damages.

20 138. Plaintiffs and Class Members seek appropriate relief for that injury, including but not
21 limited to damages that will reasonably compensate Plaintiffs and Class Members for the harm to their
22 privacy interests as a result of its intrusions upon Plaintiff's and Class Members' privacy.

23 139. Plaintiffs and Class Members are also entitled to punitive damages resulting from the
24 malicious, willful, and intentional nature of Defendant's actions, directed at injuring Plaintiffs and Class
25 Members in conscious disregard of their rights. Such damages are needed to deter Defendant's from
26 engaging in such conduct in the future.

27 140. Plaintiffs also seek such other relief as the Court may deem just and proper.
28

1 **Fourth Cause of Action**

2 **Common Law Invasion of Privacy – Intrusion Upon Seclusion**

3 141. Plaintiffs repeat the allegations contained in the foregoing paragraphs as if fully set
4 forth herein and bring this claim individually and on behalf of the proposed Class.

5 142. Plaintiffs and Class Members had a reasonable expectation of privacy in their
6 communications with Defendant via its website and the communications platforms and services therein.

7 143. Plaintiffs and Class Members communicated sensitive and protected medical
8 information and individually identifiable information that they intended for only Defendant to receive
9 and that they understood Defendant would keep private.

10 144. Defendant's disclosure of the substance and nature of those communications to third
11 parties without the knowledge and consent of Plaintiffs and Class Members is an intentional intrusion
12 on Plaintiffs' and Class Members' solitude or seclusion.

13 145. Plaintiffs and Class Members had a reasonable expectation of privacy given
14 Defendant's HIPAA Notice of Privacy Practices and Website Privacy Policy. Moreover, Plaintiffs and
15 Class Members have a general expectation that their communications regarding healthcare with their
16 healthcare providers will be kept confidential. Defendant's disclosure of private medical information
17 coupled with individually identifying information is highly offensive to the reasonable person.

18 146. As a result of Defendant's actions, Plaintiffs and Class Members have suffered harm
19 and injury, including but not limited to an invasion of their privacy rights.

20 147. Plaintiffs and Class Members have been damaged as a direct and proximate result of
21 Defendant's invasion of their privacy and are entitled to just compensation, including monetary
22 damages.

23 148. Plaintiffs and Class Members seek appropriate relief for that injury, including but not
24 limited to damages that will reasonably compensate Plaintiffs and Class Members for the harm to their
25 privacy interests as a result of its intrusions upon Plaintiff's and Class Members' privacy.

26 149. Plaintiffs and Class Members are also entitled to punitive damages resulting from the
27 malicious, willful, and intentional nature of Defendant's actions, directed at injuring Plaintiffs and Class
28

1 Members in conscious disregard of their rights. Such damages are needed to deter Defendant from
2 engaging in such conduct in the future.

3 150. Plaintiffs also seek such other relief as the Court may deem just and proper.

4 **RELIEF REQUESTED**

5 151. Plaintiffs, on behalf of themselves and the proposed Class, respectfully request that
6 the Court grant the following relief:

7 (a) Certification of this action as a class action and appointment of Plaintiffs and
8 Plaintiffs' counsel to represent the Class;

9 (b) A declaratory judgement that Defendant violated: (1) the California Invasion of
10 Privacy Act; (2) the California Confidentiality of Medical Information Act; and (3) Plaintiffs' and Class
11 Members' privacy rights as provided at common law and pursuant to the California Constitution;

12 (c) An order enjoining Defendant from engaging in the unlawful practices and illegal
13 acts described herein;

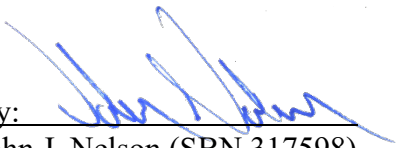
14 (d) An order awarding Plaintiffs and the Class: (1) actual or statutory damages; (2)
15 punitive damages—as warranted—in an amount to be determined at trial; (3) prejudgment interest on
16 all amounts awarded; (4) injunctive relief as pleaded or as the Court may deem proper; (5) reasonable
17 attorneys' fees and expenses and costs of suit pursuant to Cal. Code of Civil Procedure § 1021.5 and/or
18 other applicable law; and (6) such other and further relief as the Court may deem appropriate.

19 **DEMAND FOR JURY TRIAL**

20 152. Plaintiffs, on behalf of themselves and the proposed Class, demand a trial by jury for
21 all of the claims asserted in this Consolidated Complaint so triable.

22 Dated: July 15, 2024

Respectfully submitted,

23
24 By: 

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Electronic service using Case Anywhere has been authorized by Order of this Court. On **July 15, 2024**, I served the foregoing document(s) described as:

on the interested parties by placing a true and correct copy thereof on the Case Anywhere service using Josephine Lu's username and password, which will send notification of said filing to the following parties:

I declare under penalty of perjury that the foregoing is true and correct. Executed on **July 15, 2024**
at Los Angeles, California.

Josephine Lu

Case Anywhere Electronic Service List

Case Name: **Ortega, et al. v. Emanate Health Medical Center**

Case Info: **22STCV28142 and Consolidated Case (23STCV29848), Los Angeles Superior Court**

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